

Additional Dissenting Views of Representative William D. Delahunt

I oppose the articles of impeachment as reported by the Judiciary Committee. I agree with much of the reasoning included in the Minority's Dissenting Views. However, I write separately to clarify my own perspective on a number of matters, including the reliability of the allegations upon which the case for impeachment is based.

I neither condone nor excuse the President's admitted misdeeds. However, I agree with my Minority colleagues that the allegations, even if true, do not form a constitutionally sufficient basis for impeachment. Whatever the Founders meant by "high Crimes and Misdemeanors," it is well-established that impeachment should be reserved for situations in which the incumbent poses so grave a danger to the Republic that he must be replaced before finishing his term of office. The Majority has utterly failed to establish that such is the case here.

As for the allegations themselves, however, I do not believe the Minority is in any better position to assess their accuracy than the Majority. The committee took no direct testimony in this matter. We called not a single witness who could testify to the facts. Instead, we relied solely on the assertions contained in the referral of the Independent Counsel. Those assertions are based on grand jury testimony and other information -- much of it ambiguous and contradictory -- whose credibility has never been tested through cross-examination.

Even absent such evidentiary problems, Article II of the Constitution imposes upon the committee a solemn obligation -- which it may not delegate to the Independent Counsel or any other individual -- to conduct a thorough and independent examination of the allegations and make its own findings of fact.

By failing to do this -- by merely rubber-stamping the conclusions of the Independent Counsel -- we have not only failed to establish a factual basis for the charges set forth in the articles of impeachment, but have abdicated our constitutional role to an unelected prosecutor and recklessly lowered the bar for future impeachments. In so doing, we have sanctioned an encroachment upon the Executive Branch that could upset the delicate equilibrium among the three branches of government that is our chief protection against tyranny.

A related casualty of our cavalier approach to this investigation has been the due process to which even our Presidents are entitled. We released the referral -- including thousands of pages of secret grand jury testimony -- within hours of its receipt, before either the Judiciary Committee or the President's counsel had any opportunity to examine it. We voted to initiate a formal inquiry against the President without even a cursory review of the allegations. We required the President's counsel to prepare his defense without knowing what charges would be brought. And we released articles of impeachment -- drafted in secrecy by the Majority alone -- before the President's counsel had even finished his presentation to the committee.

Having put before the public a one-sided case for the prosecution, some members of the Majority actually suggested that the President had the burden of proving his innocence. When he attempted to do so, those same members accused him of "splitting hairs."

This was perhaps the most disturbing aspect of our proceedings. We live in a nation of laws, in which every person -- whether pauper or President -- is entitled to due process. This has nothing to do with "legal hairsplitting." It has everything to do with requiring those who wield the awesome power of the State to meet their burden of proof. That is what distinguishes this country from a totalitarian one. That is the genius of a Constitution crafted by men who knew and understood the nature of tyranny. As one former United States Attorney testified during our hearings, those who complain most loudly about such "technicalities" are the first to resort to them when it is they who stand accused.

Public confidence in the rule of law is ultimately more important than the fate of one particular President. And the official lawlessness that has characterized this investigation has done far more to shake that confidence than anything of which the President stands accused.

These proceedings stand in stark contrast to those of the Watergate committee -- which the Majority had self-consciously adopted as its model. During the Watergate crisis, the Rodino committee managed to transcend partisanship at a critical moment in our national life, and set a standard of fairness that earned it the lasting respect of the American people. As the Judiciary Committee voted to launch this inquiry, I expressed the hope that our proceedings would be equally fair, thorough and bipartisan, and that -- whatever our verdict might be -- our efforts would be found as worthy of praise.

In at least one important respect, the committee did merit such praise. Chairman Hyde permitted us to offer a censure resolution despite the extraordinary pressures that were brought to bear for him not to do so. In my view, the resolution which I sponsored, together with Mr. Boucher, Mr. Barrett and Ms. Jackson Lee, was -- and remains -- the most appropriate means of condemning the President's misconduct while sparing the nation the further turmoil and uncertainty of a lengthy Senate trial.

Contrary to the continuing claims of some that censure would be unconstitutional, a score of constitutional experts called as witnesses by both Republicans and Democrats on the Committee agreed in writing -- by a margin of almost 4 to 1 -- that the Constitution does not prohibit censure. And it would be a breathtaking departure from the democratic principles which are the soul of the Constitution to deny the full House an opportunity to vote on an alternative to impeachment.

As we stand on the brink of an impeachment vote for only the second time in our history, we can only hope that the democracy that has survived so many storms will weather this crisis as well, and that the irresponsible actions of this Committee will not do lasting damage to the country that we all so dearly love.